Supreme Court, U.S.
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No.

IN THE

Supreme Court Of The United States

October Term, 2000

AMRIT LAL, (Petitioner)

vs.

TREVOR GOUERT - (Respondent)

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

PETITION FOR WRIT OF CERTIORARI

AMRIT LAL, Ph.D.
338 Joy Lane
West Chester, PA 19380
(610) 692-6344

Petitioner, Pro se

32pp

QUESTIONS PRESENTED

1. Did the scheduling and conduct of the compulsory arbitration proceeding with only two-thirds of the required arbitrators and the subsequent denial by the state trial court of the Defendant-Petitioner's constitutional right to appeal the award of the board of arbitration have the effect of depriving the Defendant-Petitioner the due process of law guaranteed by the United States Constitution, Amendment XIV in a state proceeding?

PARTIES TO THE PROCEEDING

The caption of the case contains the names of all parties to the proceeding. A rule 29.6 corporate disclosure statement is not required in this matter.

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PETITION FOR A WRIT OF CERTIORARI

TO THE
SUPREME COURT OF PENNSYLVANIA
OR
SUPERIOR COURT OF PENNSYLVANIA

Petitioner, Amrit Lal, respectfully prays that a writ of certiorari issue to review the Order of the Supreme Court of Pennsylvania denying appeal from a judgment of the Superior Court of Pennsylvania which affirmed a judgment of the Court of Common Pleas of Chester County, Pennsylvania granting the Plaintiff's Motion to Quash the Defendant's Appeal from an award of $50,000 against the Defendant by an arbitration panel convened pursuant to the compulsory arbitration system of Pennsylvania.

OPINIONS BELOW

The Order of the Supreme Court of Pennsylvania is reported at 2000 WL 19821, ___ A.2d ___ (Pa.). The Orders of the Superior Court of Pennsylvania and the Court of Common Pleas of Chester County, Pennsylvania are not reported. The aforesaid Orders appear as Appendices A, B and C to this Petition, respectively.

JURISDICTION

The Order of the Supreme Court of Pennsylvania denying the Defendant's Petition for Allowance of Appeal was filed on April 18, 2000. A timely Application for Reconsideration was filed on April 28,

2000. The Order of the Supreme Court of Pennsylvania denying the Application for Reconsideration was filed on June 6, 2000. This Court's jurisdiction is invoked under Title 28 U.S.C. sec. 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment XIV to the United States Constitution is set forth in Appendix E.

STATEMENT OF THE CASE

The Petitioner, Amrit Lal, Ph.D. owned a rental property in West Chester, Chester County, Pennsylvania which he leased to the Respondent, Trevor Gouert. As a condition of the lease, Gouert was on his own because of his property maintenance handyman skills. Any money spent by him was reimbursed by the Petitioner. Gouert commenced an action for damages in the Court of Common Pleas of Chester County for personal injuries alleged to have occurred because of the collapse of the porch at the property on which the plaintiff was hanging or pulling down as a playful act or an act of mischief. The action was initiated by the filing of a Praecipe for a Writ of Summons on December 9, 1996 alleging that the injury occurred two years earlier creating a doubt whether the action was within statute of limitations. On the cover sheet attached to the Writ of Summons the box indicating that it was an arbitration matter was checked and the Prothonotary of the Court of Common Pleas of Chester County set an arbitration hearing for August 1, 1997. The Praecipe and writ were docketed at No. 96-10353. Gouert did not file a complaint until October 1997 or ten months after initiating the writ

of summons.The compulsory arbitration system of Pennsylvania was instituted by the Act of July 9, 1976, P.L. 586, No. 142; 42 Pa.C.S.A. sec. 7361, et seq. The Act requires that certain cases where the demand for damages is small be tried before a board of arbitrators comprised of three attorneys practicing in the county of venue and who are members of the BAR. Either party may appeal from the arbitrators' award and upon appeal a trial de novo is granted in the Court of Common Pleas of the county of venue. The Chester County Rules of Civil Procedure, Rule 1301.1, et seq. require the compulsory arbitration of most civil matters where the demand is less than $50,000. Rule 1301.1(a) provides: "(a) All civil cases at law which are now or hereafter at issue wherein the amount in controversy in each cause of action, i.e., the amount claimed in each count, stated therein, exclusive of interest and costs, does not exceed fifty thousand ($50,000) dollars, and which do not involve title to real property, shall be submitted to, heard, and decided by a board of arbitrators consisting of three (3) attorneys admitted to practice before the Supreme Court of Pennsylvania actively engaged in the practice of law primarily in Chester County."

Rule 1301.2(f) of the Chester County Rules which used to provide for the filing of a certificate of readiness approved by both parties as a prerequisite to holding a compulsory arbitration hearing was rescinded in November 1994.

Rule 1302.1(c) also required: Board of arbitation shall be appointed from the list of **MEMBERS OF THE BAR** which provision is in conformity with the state Rule PA.R.C.P. 1302(b)

On October 8, 1997 Gouert's attorney filed a Complaint in the Court of Common Pleas of Chester County docketed at another term and number, No. 95-11711, although an arbitration was scheduled for October 14, 1997. In Pennsylvania, a plaintiff may commence an action by filing a praecipe for a writ summons. He must then serve the writ of summons upon the defendant. The plaintiff may file a complaint in the same action subsequently and serve it by ordinary mail assuming jurisdiction over the defendant has been acquired previously by by the Court through service of the writ. However, where jurisdiction in another action has not been obtained Pennsylvania procedure would require personal or other permitted service by Sheriff of the document commencing the action, be it writ or complaint. How the wrong term and number appeared on the Complaint in the case at bar is not explained. The plaintiff failed to effect personal service upon the defendant of the Complaint in this matter, he merely mailed it to the Defendant. Contrary to the Pennsylvania Rules of Civil Procedure, the Complaint was not verified by the plaintiff, but only verified by his attorney. Plaintiff had arranged to have the arbitration rescheduled and a hearing was set for October 24, 1997, but on that date the hearing was changed to February 1998 and subsequently to May 29, 1998. On November 27, 1997 the Defendant filed preliminary objections to the Complaint because it was not inconformity with the Pennsylvania rules of civil procedure no §1019, 1021, 1023 & 1024. The plaintiff made a dilatory filing of his own preliminary objections. The defendant's preliminary objections were overruled notwithstanding several defects requering that the complain be dismissed. Defendant then filed an answer with new matter and counterclaim on May 18, 1998 to which was endorsed a

notice to defend pursuant to Rule 1018.1, Pa.R.Civ.P. On May 29, 1998, the date of the arbitration, the plaintiff filed an answer to the defendant's new matter and counterclaim but failed to serve it upon the defendant until June 1, 1998 by mail although the arbitration had taken place on May 29, 1998 including the dismissal of defendant Lal's counterclaim which had just been responded to by Gouert's Attorney. In other words, a compulsory arbitration award was rendered without the pleadings being closed and without any discovery, deposition or affidavits relevant for trial.

Although Pennsylvania law [Rule 1302(b), Pa.R.Civ.P.] and the county procedural rules [Rule 1301.1, C.C.R.C.P.] require that compulsory arbitration boards be comprised of three attorneys the arbitration board which was convened on May 29, 1998 only had two members. They were both attorneys working for the county government who had been summoned by telephone especially for this proceeding with no prior notice. The board as constituted awarded $50,000 to the plaintiff and awarded nothing to the defendant on his counterclaim. The plaintiff had failed to comply with Chester County's pre-arbitration procedure by neglecting to send a pre-arbitration memorandum a week before the arbitration as required by Rule 1303.2(a), C.C.R.C.P. A motion to mold the award filed by the defendant on June 24, 1998 was denied on July 9, 1998 and docketed on July 10, 1998. Petitioner filed a notice of appeal on July 20, 1998 (within ten days) because July 19 was a sunday as allowed by Pa.R.C.P.1307(d). On July 17, 1998 defendant had filed a motion for a new arbitration hearing which was denied on August 13, 1998 by the Common Pleas Court in a short order with a footnote stating that an appeal for a trial de novo was the sole remedy of a party seeking to challenge an

arbitration award. Defendant wanted to pay the arbitrators' fee after a ruling on his outstanding petition for a new arbitration. Lal certified that the fee would be paid if his motion for a new hearing was denied. On September 11, 1998 he filed an Amended Notice of Appeal and tendered payment of the arbitrators' fee with this Amended Notice. Petitioner's payment of fee was not accepted by the Prothonotary.

Plaintiff Gouert then filed a Motion to Quash the Appeal from the arbitration. The court held oral argument on the plaintiff's Motion. Defendant Lal made a motion for an evidentiary hearing so that the defects and IRREGULARITIES of the arbitration hearing will become part of the record. Defendant's request for evidentiary proceedings was denied. If evidence had been taken, it would have become clear that the two arbitrators who were appointed in haste were not qualified to be arbitrators because both of them were not members of the BAR OF CHESTER COUNTY and both of them worked for the same employer which arrangement is prohibited by Pa.R.C.P 1302(d).

An order granting the plaintiff's motion to quash was issued by the lower court on October 26, 1998. To the extent relevant, defendant/petitioner submits that he is foreign born and a member of both a racial and a religious minority group. He was born in that part of India which now comprises the country of Pakistan. He is of the Hindu religion and of Asiatic Indian racial background. He migrated to the United States in 1961 and became a naturalized citizen in 1976.

REASONS FOR GRANTING THE WRIT

The following reasons are advanced for the granting of a writ of certiorari in this matter in accordance with the guidelines set forth in Rule 10 of the Rules of the Supreme Court of the United States.

The Pennsylvania Supreme Court Has Decided an Important Question of Federal Law That Has not Been, but Should be, Settled by this Court.

The Pennsylvania Compulsory Arbitration Statute and Rules of Civil Procedure Relating to Arbitration were Applied to the Petitioner in an Unconstitutional Manner in the Case at Bar.

1. JURY TRIAL PETITIONER WAS DENIED THE RIGHT TO A JURY TRIAL.

The right to a jury trial in Pennsylvania civil proceedings is guaranteed by Article I, section 6 of the Constitution of Pennsylvania which reads:

"Trial by jury shall be as heretofore, and right thereof remain inviolate. The General Assembly may provide, however, by law, that a verdict may be rendered by not less than five-sixths of the jury in any civil case." Pennsylvania considers It a sacred right, embodied in the Magna Charta and originating at an even earlier time. As Chief Justice Bell of the Pennsylvania Supreme Court said in his concurring and dissenting opinion in Application of Harvey A. Smith, 381 Pa. 223, 112 A.2d 625 (1955) (a case involving Pennsylvania's compulsory arbitration system and the right to a jury trial thereunder):

"The right to jury trial is immemorial. It was brought from England to this country by the colonists, and it has become a part of the birthright of every free man. It is a right which is justly dear to the American people, and

one which is expressly guaranteed by the Federal constitution and by the Constitutions of the several states. In Magna Charta, the basic principle of the right to jury trial is more than once insisted on as the great bulwark of English liberties, especially by the provision that 'no freeman shall be hurt, in either his person or property...unless by lawful judgment of his peers or equals, or by the law of the land..."

In Application of Harvey A. Smith, supra, the Pennsylvania Supreme Court addressed the question of the constitutionality of Pennsylvania's compulsory arbitration system which required that most civil actions brought in the Court of Common Pleas where the demand was below a certain figure be tried before a board of three arbitrators who were members of the bar. Any party feeling aggrieved by the decision of the arbitrators had the right to appeal by filing a notice of appeal and paying the arbitrators' fee as a non-refundable expense not taxable as costs against the losing party. Upon appeal, the appellant was entitled to a full trial de novo in the Common Pleas Court and could elect a trial by jury as in any other civil case with respect to which a jury trial was guaranteed under Article I, section 6 of the Pennsylvania Constitution.

The Supreme Court of Pennsylvania conceded that compulsory arbitration would violate the Pennsylvania Constitution if it had the effect of compelling the parties to submit to arbitration against there will or without their assent. The court went on to say (at p. 230 of 381 Pa.):

"Indeed a compulsory arbitration conflicts also with the 14th Amendment of the Federal Constitution in that it works a deprivation of property and liberty of contract without due process of law. [Citations.] But this is so

only where the statute closes the courts to litigants and makes the decision of the arbitrators the final determination of the rights of the parties; therefore there is no denial of the right of trial by jury if the statute preserves that right to each of the parties by the allowance of an appeal from the decision of the arbitrators or other tribunal."

The Pennsylvania Supreme Court held that the act had been applied in an unconstitutional manner by the Court of Common Pleas of Lancaster County because the requirement that the arbitrators' fee be paid as a condition for appealing required payment of an unreasonably large , non-recoverable fee where a relatively small claim was at issue. In Application of Harvey A. Smith the appellant would have been required to pay a $75 arbitration fee in order to obtain a jury trial for a claim of only $249.

In addition, the Pennsylvania Supreme Court found the lower court's practice invalid because it required compulsory arbitration of all claims of $500 or less while the statute specified $1,000 as the threshold amount for compulsory civil arbitration. As to this point, at least, the Pennsylvania Supreme Court required uniform practice throughout the counties.

The identical question has been considered by this Court in Capital Traction Co. v. Hof, 174 U.S. 1, 19 S.Ct. 580 (1899) wherein it was said (at p. 589 of 19 S.Ct.)with respect to preserving the constitutionality of compulsory arbitration proceedings:

"....All that is required is that the right of appeal for the purpose of presenting the issue to a jury must not be

burdened by the imposition of onerous conditions, restrictions or regulations which would make the right practically unavailable."

Subsequently, the constitutionality of compulsory arbitration programs has been held suspect. Wolff Packing Co. v. Industrial Relations Court, 262 U.S. 522, 43 S.Ct. 630 (1923); Dorchy v. State of Kansas, 264 U.S. 286, 44 S.Ct. 323 (1924). The petitioner in Application of Henry A. Smith complained that the arbitrators' fees payable upon appeal could not be recouped by the appellant even if his appeal ultimately proved successful. The court held that as a matter of the Constitutional law of Pennsylvania this was not facially an invalid requirement. However, implicit in the court's opinion is the rule that the requirement of payment of the arbitrators' fee may not be imposed in such a way as to amount to a substantial restriction upon the right to a jury trial. The court held invalid that portion of the procedural rules of the lower court which required payment of substantial arbitrators' fees when the amount at issue in the case to be appealed was relatively small. This deterrent to frivolous appeals was considered to amount to nearly a denial of the right to a jury. In the case at bar the petitioner was effectively cut off from any access to a determination of the facts by a jury.

These cases emphasize that a compulsory arbitration system must afford the litigant the meaningful right to a jury determination of the factual issues before a final judgment can be entered. There was no meaningful opportunity for a jury determination in the case at bar. The Petitioner did not make the payment of the arbitrator's fee at the time of filing the notice of appeal with the Prothonotary for the good reason that a

previous petition had been filed which, if granted, would have resulted in a new arbitration. Had the petition been granted there would have been no need for a trial de novo. The court's action amounted to the imposition of an onerous condition upon the right to obtain a jury trial. Such was forbidden by this Court in Capital Traction Co. v. Hof, supra.

2. THE MATTER WAS RUSHED TO ARBITRATION AWARD IN AN UNCONSTITUTIONAL MANNER.

Although the procedure followed by the Court of Common Pleas of Chester County may have resulted in a speedier determination than otherwise possible, the 14th Amendment was designed, among other things, to prevent governmental overbearing against the fragile citizenry out of a concern for efficiency. Stanley v. Illinois, 405 U.S. 645, 92 S.Ct. 1208 (1972).

Pennsylvania law requires that the pleadings be closed before a case can be considered ripe for adjudication on the merits. Reddick v. Punturéri, 242 Pa. Super. 138, 363 A.2d 1198 (1976). This rule obviously precludes a party from being surprised at the last minute by a legal theory or factual assertion against which he has not had time to prepare a response. In May v. Armstrong Developers, 445 Pa. Super. 1, 664 A.2d 1387 (1995) it was held that the trial court should not have considered and ruled on a motion equivalent to a request for summary judgment or judgment on the pleadings which was filed on the same morning as the trial was scheduled to begin because the opposing party was thereby deprived of the opportunity to prepare a proper response.

The courts of Pennsylvania intend the certificate of readiness to be an integral part of civil procedure. For instance, filing a certificate of readiness was mentioned as a necessary step to avoid nolle pros in Hughes v. Frisk, Fisk and Associates, 718 A.2d 316 (Pa. Super. 1998). The requirement of a certificate of readiness gives the parties an opportunity to contest the question of whether a case really is ready for arbitration. Cf., Tarantino v. Kutztown University, 654 A.2d 115 (Pa. Cmwlth. 1995); Valley Peat & Humus v. Sunnylands, Inc., 398 Pa. Super. 400, 581 A.2d 193 (1990).

In november 1994, when Chester County rescinded the requirement of a certificate of readiness it removed a valuable procedural safeguard and helped cause confusion by departing from a practice followed by a number of other counties Including Philadelphia County.

In this case petitioner Lal did not have proper notice of the date and time of hearing. Also counsel for plaintiff Gouert did not meet mandatory requirement of a pre arbitration memorandum in advance of the hearing. (See appendix G.) Had plaintiff sent a copy of the pre arbitration memorandum a week in advance petitioner Lal would have been on notice of the hearing date.

Petitioner then would have requested a continuance for discovery in preparation for trial. It appears that it was counsel for plaintiff Gouert who pushed the court administrator to rush the convening of a board of arbitrators even though none of the members of the bar had been notified or invited to hear this case. By the use of the telephone the court administrator was able to summon two county employees who were not members of the bar and who overlooked the mandate of three arbitrators required by the pennsylvania law since 1836. Their award in this matter is neither legally valid nor constitutionally sound.

3. IT WAS CONSTITUTIONAL ERROR TO REFUSE TO ALLOW THE PETITIONER TO APPEAL FROM THE ARBITRATION AWARD AND HAVE A TRIAL DE NOVO BY JURY.

The Superior Court of Pa. did not reverse the lower court because the petitioner had not paid the arbitrators fee at the same time as he filed his notice of appeal. Pennsylvania law allows two step process to applicant's in forma pauperis. They can pay the arbitrator fee at a later date after the filing of a notice of appeal. In this particular case the two arbitrators were already receiving their regular salary from the county. See Appendix G, C.C.R.C.P. §1308.1. No prejudice would be caused to plaintiff if the arbitrator's fee was paid after the disposition of defendant's pending motion for a new arbitration hearing.

In Pullium v. Laurel School District, 316 Pa. Super. 339, 482 A.2d 1380 (1982), it was held that although statutory requirements for perfecting appeals from arbitration awards are jurisdictional, an appeal will not be quashed where there has been substantial compliance with other requirements. In Armstrong v. Travelers Insurance Company, 310 Pa. Super. 263, 456 A.2d 6702 (1982), it was held error to quash an appeal from an arbitration award where the appellant had paid all costs ascertainable from the record but had failed to pay some costs of which he was not aware. In Briga v. Ken-Tuck Sighs, Inc., 279 Pa. Super. 628, 421 A.2d 329 (1980), it was held that failure to comply with all the technicalities of a local rule governing appeals from arbitration awards was not fatal to the appeal as long as the failure to comply was not prejudicial to the opponent.

In Donegal Insurance Co. v. Longo, 415 Pa. Super. 628, 610 A.2d 466 (1992), the court said that arbitration proceedings are subject to procedural due process standards and that generally an arbitration award can be vacated where a party did not receive a FULL AND FAIR HEARING. In an arbitration proceeding pursuant to a provision in an insurance policy, the court held that the award should have been set aside by the lower court because one of the arbitrators was representing one of the parties in an unrelated matter and this had not been disclosed to the other party prior to the commencement of arbitration hearings.

In the case at bar allowing a new arbitration hearing or an appeal would not have been prejudicial to the plaintiff and would have cured the fatal defect of only having two arbitrators, both of whom worked for the same employer and both of them were not member of the BAR OF CHESTER COUNTY. Further, one of the two arbitrators needed to disqualify himself as an arbitrator because of conflict of interest, in that he was counsel for the defendant county sued by petitioning defendant in another case. And also he had disqualified himself in a prior arbitration matter upon defendant's motion.

In Pantoja v. Sprott, 721 A. 2d 382 (1998) the Pa Superior Court granted a new arbitration hearing for the third time. Not to allow defendant Lal his statutory right to appeal or a new arbitration by a panel of three disinterested members of the bar in private practice falls below the due process standards required of the States by the XIVth Amendment to the United States Constitution.

CONCLUSION

For all the foregoing reasons and arguments, the petition for a writ of cerirorari should be granted. In the alternative, petitioner requests that an order may issue for a new trial allowing time for discovery specially when it has not been established wether the commencement of this civil action was within the two years Statute of Limitations.

RESPECTFULLY SUBMITTED,

_____

Amril Lal
Petitioner, pro se

Date: September 2, 2000

APPENDIX A

Supreme Court of Pennsylvania

MIDDLE DISTRICT

434 MAIN CAPITOL BUILDING
P.O. BOX 624
HARRISBURG, PA. 17108
(717) 787-6181

TREVOR GOUERT,	:	No. 1234 M.D. Alloc. Dkt. 1999
Respondent	:	
v.	:	Reconsideration
AMRIT LAL,	:	
Petitioner	:	

Dear Petitioner:

This is to advise you that the attached order has beeb entered on the Petition for Reconsideration filed in the above-captioned matter.

Very truly yours,
office of the Prothonotary
Supreme Court of Pennsylvania

ORDER

PER CURIAM

AND NOW, this 6th day of June, 2000, the Application for Reconsideration is denied.

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

TREVOR GOUERT,	:	No. 1234 M.D. Alloc. Dkt. 1999
Respondent	:	Reconsideration
v.	:	
AMRIT LAL,	:	
Petitioner	:	

ORDER

PER CURIAM

AND NOW, this 18th day of April, 2000, the petition for allowance of appeal is denied.

APPENDIX B

J.A21003/99

TREVOR GOUERT,	:	IN THE SUPERIOR COURT
Appellee	:	OF PENNSYLVANIA
v.	:	
AMRIT LAL,	:	
Appellant	:	No. 3632 Philadelphia 1998

Appeal from the Order enterend on October 26, 1998 in the Court of Common Pleas of Chester County, Civil Division, No. 96-10353

BEFORE : HUDOCK, JOYCE and MUSMANNO, JJ

MEMORANDUM:

Appellant Amrit Lal ("Lal") appeals from an Order quashing an appeal de novo from an arbitration award in favor of Appellee Trevor Gouert ("Gouert"). We affirm.

The pertinent facts of this case are as follows. Gouert initiated a personal injury action against Lal, which action was referred to compulsory arbitration because of the amount of damages requested. An arbitration hearing was held on May 29, 1998, over which two arbitrators presided. Lal did not appear at that hearing. The arbitration panel issued an award in favor of Gouert in the amount of $50,000.

On June25, 1998, Lal filed a Motion to Mold the Arbitration Award, which was denied. On July 17, 1998, Lal filed a Petition for a New Arbitration Hearing, Which also was denied. On July 20, 1998, Lal filed a Notice of Appeal for a trial de novo. Lal did not pay the arbitrator's compensation to the Prothonotary at that time, but rather stated that he would pay that compensation at some time in the future. Gouert filed a Motio to Quash Appeal. The trial court granted that Motion, concluding that Lal's Notice of Appeal was untimely and that Lal failed timely to pay the arbitrator's compensation. Lal then filed this timely appeal.

On appeal, Lal contends that the trial court erred by quashing his appeal for a trial de novo. Lal also raises other issues on appeal relating to the substance of his underlying claims.

When we review a trial court's decision to quash an appeal de novo from an arbitration award, we may reverse only if the trial court abused its discretion or committed an error of law. **Pantoja v. Sprott,** 721 A. 2d 382 (Pa. Super. 1998). A notice of appeal from an arbitration award must be filed within thirty days after the entry of the award, and the arbitrators' compensation must be paid to the prothonotary by

the appellant at that time. Pa.R.C.P. 1308(a). If an appellant does not take foregoing steps, his appeal will be quashed. **See, e.g., Hall v. Reeb,** 555 A.2d 926 (Pa. Super. 1998)' **Lough v. Spring,** 556 A.2d 441 (Pa. Super. 1998).

In this case, we note that, even if Lal had filed a timely Notice of Appeal from the arbitration award as he argues, he failed to pay the arbitrators' compensation at that time. Thus, Lal failed to comply with at least one of the prerequisites to filing a proper appeal from an arbitration award. We therefore conclude that the trial court did not err by quashing that appeal. Because we conclude that Lal's appeal was quashed properly, we need not address Lal's other contentions on appeal.

Order affirmed.

JUDGMENT

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court that the judgment of Court of Common Pleas of CHESTER COUNTY Be, and the same is hereby AFFIRMED.

BY THE COURT:

PROTHONOTARY

Dated:September 20th, 2000

APPENDIX C

TREVOR GOUERT,	:	IN THE COURT OF COMMON PLEAS
v.	:	CHESTER COUNTY, PENNSYLVANIA
AMRIT LAL,	:	CIVIL ACTION – LAW
	:	NO. 96-10353

OPINION PURSUANT TO Pa.R.A.P. 1925

Appellant, Amrit Lal, has appealed from the Order entered in this matter on October 26, 1988. In response to Pa.R.A.P. 1925(a), the trail court respectfully invites the attention of the Superior Court to the Order of October 26, 1998, which sets forth the reasons for the ruling now complained of on appeal. A copy of that Order is attached hereto.

BY THE COURT:

Date: 12/3/98 HOWARD F. RILEY, JR. J

ORDER

AND NOW, this 26th day of October, 1998, upon consideration of Defendant's motion for Reconsideration and plaintiff's Motion to Quash Appeal, responses thereto, and argument of counsel on October 22, 1998, it is herby ORDERED and DECREED that defendant's motion is DENIED and plaintiff's motion is GRANTED.[1]

BY THE COURT:
HOWARD F. RILEY, JR. J.

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1 The plaintiff brought an action for personal injuries sustained on defendant's rented premises when a support post on the porch gave way and the porch

collapsed on plaintiff. This matter went to arbitration on May 29, 1998 before a panel of two arbitrators who entered judgment in favor of plaintiff in the amount of $50,000.00, noting that defendant failed to appear.

Rather than file a Notice of Appeal of the Arbitration Award, defendant chose to file a "Request for Entry of an Amended Award or a new Hearing in the Alternative" and subsequently an Application to mold the Award of Arbitrators.

This court denied defendant's motions on the grounds that "an appeal for a trial de novo is the exclusive remedy to a party seeking to challenge an arbitration award." (See Orders, Riley, J., entered July 9, 1998 and August 13, 1998, citing Pa.R.C.P. 1307(d) and the case of Lough & Lough v. Spring, 36 D&C3d 26 (1985)).

Defendant did subsequently file a notice of Appeal; however, it was untimely and defendant did not pay the required compensation of the arbitrators at or prior to the time of the filing of his Notice of Appeal. In fact, rather than using the language expressly provided for in Pa.R.C.P. 1313, that "the compensation of the arbitrators has been paid", the defendant stated:

I hereby certify that the compensation of the arbitrators will be paid soon after the ruling on a Motion for New Arbitration Hearing being filed separately.

Thus, plaintiff filed a Motion to Quash the Appeal. Defendant responded by filing a Motion for Reconsideration of this Defendant responded by filing a Motion for Reconsideration of this Court's order of August 13, 1998, denying a new arbitration hearting.

Because the law is clear that defendant's exclusive remedy to challenge an arbitration award is tc file a

notice of appeal for a trial de novo, his motion for reconsideration is denied. Furthermore, given the untimeliness of defendant's Notice of appeal and his failure to make timely payment of the arbitrators' compensation, plaintiff's Motion to Quash appeal is granted. See Vacca v. Matteo, 468 A.2d 812 (Pa. Super. 1983) and Oakley, Inc. v. School District of Philadelphia, 346 A.2d 765 (Pa. 1975).

ORDER

AND NOW, this 3rd day of August, 1998, upon consideration of Defendant's motion for a new Arbitration Hearing, it is herby ORDERED and DECREED that the Motion is DENIED.[1]

BY THE COURT:
HOWARD F. RILEY, JR. J.

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1 An appeal for a trial de novo is the exclusive remedy to a party seeking to challenge an arbitration award. Lough & Lough v. Spring, 36 D.&C. 3d 26 (1985).

ORDER

AND NOW, this 9th day of July, 1998, upon consideration of Defendant's Application to Mold the award of Arbitrators pursuant to Pa. R.C.P. 1307(d), it is herby ORDERED and DECREED that the Application is DENIED.[1]

BY THE COURT:
HOWARD F. RILEY, JR. J.

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1 Where the record and the award disclose and obvious and unambiguous error in the award in mathematics or language, the court, on application of a party, may mold the award to the same extent and with the same effect as the Court may mold the verdict of a jury. Pa. R.C.P. 1307(d). Subsection (d) is limited to errors in mathematics or language and should be rarely applicable. Pa. R.C.P. 1307, Explanatory Note – 1981. In the absence of an obvious error in mathematics or language, an appeal for a trial de novo is the exclusive remedy to a party seeking to challenge and arbitration award. Lough & Lough v. Spring, 36 D.&C. 3d 26 (1985).

APPENDIX D

IN THE COURT OF COMMON PLEAS OF CHESTER COUNTY, PENNSYLVANIA

AWARD

We the undersigned abritrators, having been duly appointed abd sworn (or affirmed), make the following award: Judgment for the plaintiff, Trevor Gouert and against the defendant Amrit Lal in the amount $50,000.00.

Note-Defendant failed to appear judgment for the plaintiff and against the defendat on the counterclaim in no amount.

Signed

Arbitrator (1)_____

Arbitrator (2)_____

NOTICE OF ENTRY OF AWARD

Now, the 29th day of May, 1998 at 2:38pm the above award was entered upon the docket and notice thereof given by mail to the parties or their attorneys.

Signed_____
Prothonator

Arbitrators' compensation to be paid upon appeal: $205.00

APPENDIX E

Amendment XIV to the United States Constitution

Section 1. All persons horn or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

APPENDIX F

Arbitration **42 Pa.C.S.A. § 7361**

Extract

SUBCHAPTER C. JUDICIAL ARBITRATION

§ 7361 Compulsory arbitration

(a) General rule.- Except as provided in subsection (b), when prescribed by general rule or rule of court such civil matters or issues therein as shall be specified by rule shall first be submitted to and heard by a board of three members of the bar of the court.

(b) Limitations.- No matter shall be referred under subsection (a):

(1) which involves title to real property; or

(2) where the amount in controversy, exclusive of interest and costs, exceeds:

(i) #50,000 in judicial districts embracing first, second, second class A or third class counties or home rule counties which but for the adoption of a home rule charter would be a county of one of these classes.

APPENDIX G

CHESTER COUNTY RULES OF CIVIL PROCEDURE (CCRCP)

Compulsory Arbitration

Extract

Rule 1303.2. ***Pre-Arbitration Memorandum.***

(a) At least seven days before the date of the arbitration hearing,all parties shall file with the Prothonotary, in triplicate, a memorandum in the form provided and shall immediately serve a copy on each party. This memorandum shall set forth the following:

(1) A brief statement of the salient facts of the claim or defense.

(2) A statement of the legal basis of the claim or defense.

(3) A list of all special damages claimed, such as lost earnings, loss of future earning capacity, medical expense (itemized), property damages.

(4) A list of the names and addresses of all witnesses whom that party intends to call at arbitration.

(5) A list of all exhibits to be offered by that party at arbitration. All exhibits shall be numbered prior to the arbitration.

(6) An estimate of the amount of time necessary to present your claim or defense.

(7) Special comments regarding legal issues.

(8) A certification that the attorney has, on behalf of his/her client, made a reasonable effort to stipulate or agree to all undisputed issues of fact or law which would expedite the arbitration of this matter.

(b) It is expected that the memorandum will not exceed two pages, except in unusual cases.
(c) Except in extraordinary circumstances as determined by the arbitrators, a party will not be allowed to call a witness at the arbitration hearing who is not listed in a timely-filed pre-arbitration memorandum.
(d) Except in extraordinary circumstances as determined by the arbitrators, a party will not be allowed to offer an exhibit at the arbitration hearing that is not listed in a timely-filed pre-arbitration memorandum.

Rule 1308.1. ***Compensation of Arbitrators.***

The chairman and other arbitrators shall receive compensation paid by the County as determined by the Court.